

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.13582 of 2011
Date of decision:14.03.2017**

Gopal Mishra

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Subhash Ahuja, Advocate
for the petitioner.

Mr.Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. Tushar Sharma, Advocate
for respondent No.4.

AMIT RAWAL J.

The petitioner – Gopal Mishra is in writ Court seeking quashing of the order dated 17.09.2010 (Annexure P-15) rendered by respondent No.2 -the Special Secretary to the Government, Haryana, whereby, revision petition of Society against the order dated 27.04.2006 passed by the Inspector Cooperative Society and 25.01.2007 of the Assistant Registrar Cooperative Societies, has been allowed.

Mr. Subash Ahuja, learned counsel appearing on behalf of the petitioner submits that petitioner being a Correspondent/Journalist became a member of the National Media Centre Cooperative House Building Society Limited, Nathupur, District Gurgaon (hereinafter referred to as “respondent-Society”) being Founder/Promoter Member on payment of a sum of ₹50/- as share money and ₹10/- as admission fee. The membership of the Society was confined only for correspondents and journalists. In the year 1993, the

respondent – Society had initially planned to raise construction of some of flats on a piece of land @ ₹10,00,000/- each flat through contractors and directed all its members to deposit the amount. The petitioner had deposited a sum of ₹1,05,000 and ₹3,00,000/- against receipt Nos.1365 and 1373 dated 11.03.1993 and 24.03.1993 respectively, total comes to ₹4,05,000/-. He had also obtained a loan of ₹3.80 lacs from the LIC. He could not make necessary arrangements for obtaining more loan and having left with no other option, requested the respondent-Society for refund of his money and for allotment of dwelling unit under new plan, vide letter dated 07.05.2001 (Annexure P-2).

Thereafter, 10 new houses were planned to be raised on the land received from National Media Centre for which the claims of left out members including the defaulter members as well as induction of new members like sons, sons-in-law of existing members etc. were also considered by General Body of the Society in its meeting held on 29.06.2003. As per copy of the minutes (Annexure P-3), names of 26 persons were recommended for allotment of dwelling units by a draw of lot.

The petitioner received a letter dated 04.09.2003 (Annexure P-4) indicating him that the membership will be confirmed on the basis of following stipulations:-

1. receipt of signed affidavit.
2. receipt of post dated cheque bearing the date 25 September, 2003 for ₹15,00,60/-, whereas, the total price of the plot measuring 238.60 sq.yards had been kept as ₹28,63,200.00/- and the earnest

money to be paid by Ist November, 2003.

The petitioner submitted all the necessary documents like affidavit and requested the respondent-Society to furnish the break up of ₹28,63,200.00, vide letter dated 23.09.2003 (Annexure P-5). The respondent-Society was to work on “No Profit - No Loss” basis but the office bearers of the respondent – Society were in league with earlier contractors and got the two awards passed in their favour.

Vide letter dated 29.09.2003 (Annexure P-7), the petitioner was informed that in case, the payment is not made within 48 hours, the offer of a plot will be withdrawn. However, the matter was referred to the Arbitrator under Sections 102/103 of Haryana Cooperative Societies Act, 1984 (hereinafter referred to as “1984 Act”). The Arbitrator -Inspector, Cooperative Societies, Gurgaon, vide award dated 27.04.2006 held that the petitioner was found to be member of the respondent-Society and the Society had already refunded a sum of ₹4,00,050/- to the petitioner and an amount of ₹5010 is still lying with the respondent-Society, therefore, he was entitled to membership of the Society.

The respondent – Society assailed the aforementioned order by filing an appeal before the Assistant Registrar, Cooperative Societies Gurgaon but the same was dismissed vide order dated 25.01.2007 (Annexure P-13) and the revision has erroneously been allowed, vide order dated 17.09.2010 (Annexure P-15). The impugned order is not in consonance with the provisions of Section 115 of 1984 Act as the two documents, Annexure P-16 which have been placed on record by miscellaneous application had been taken on record only after the matter

was kept reserved and thus, the petitioner has not been given any chance to rebut the same and therefore, the order under challenge being perverse is contrary to the established facts.

He further submits that termination of his membership or replacement by a new member in the year 1994 was not at all in question as he continued to be a member of the Society since his membership fee and share money were never refunded to him. Even his case being left out/defaulted was considered by General Body of the respondent-Society for allotment of a dwelling unit out of the new flats on “No Profit – No Loss Basis”. Even the principles of natural justice have not been adhered to. The resolutions dated 31.07.1994 or 27.08.1994 (Annexure P-16) do not establish its genuineness, rather goes long way to prove the fabrication of the same. The falsity of the resolution is also proved from the fact that the present allotment and claims of defaulter member like the present petitioner were considered, who somehow could not allot flats in earlier plan. The resolution, Annexure P-3 is a clincher to the same and thus, urges this Court for setting aside the impugned order.

Per contra, Mr.Tushar Sharma, learned counsel appearing on behalf of respondent No.4 submits that petitioner had not come to the Court with clean hands and had concealed the factum of certain documents, particularly Annexures R4/1 and R4/2. In fact, the petitioner became a member of the Society, vide certificate no.10 on 12.04.1986 as he was joint member with another person namely Manishi Sharma but the said person withdrew from the Society and petitioner, vide letter dated 04.01.1994 became a sole member. The receipt of earnest money has not been

disclosed which fact is evident from the letter dated 18.05.1994 (Annexure R-4/1) and the factum of termination of membership and removal of his name from the rolls of the Society was duly recorded by the Managing Committee in its resolution dated 31.07.1994 and 27.11.1994. In the year 2003, the respondent- Society decided to construct 10 more units (houses) and petitioner had also submitted an application dated 06.04.2003 for acquiring membership of the respondent-Society which is evident from the application form, Annexure R-4/2. The selection of the applicants to be inducted as members was made by way of draw of lots and name of the petitioner was kept in waiting list but the persons who were kept in said list did not make the payment, though was given a chance to get the membership of the Society and vide letter dated 04.09.2003, the petitioner, was informed to deposit the money but having failed to do so, therefore, he could not become a member of the Society. Even he did not adhere to the contents of the letter dated 29.09.2003 (Annexure P-7) and after 18 months, preferred a petition. He, thus, urges this Court for dismissal of the writ petition.

In rebuttal, Mr. Ahuja, Advocate has relied upon the following judgments:-

- i) **Mohinder Singh vs. State of Haryana and others 2001 (2) RSJ 704** to contend that the additional grounds in the revision before the Government though can be taken but the questions which were not raised before the Registrar and having taken for the first time cannot be taken against a person particularly in the revision petition.

ii) **The State of Kerala vs. K.M.Charia Adbulla and Co.**

AIR 1965 Supreme Court 1585 regarding the jurisdiction of the revisional authority.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Subhash Ahuja. The petitioner had not been fair and honest to this Court in not disclosing the factum of the acceptance of his refund of earnest money, vide letter dated 18.05.1994, Annexure R-4/1, the contents of which read as under:-

“Regd. A.D.

Ref. No.:NMC/CHBSL/94/486 18.5.1994

Dear Mr. Misra,

Your Joint Member Mr. Manishi Sharma having withdrawn his contribution from your account with your consent on March 1, 1994, you had run into arrears. This had rendered you in arrears of second installment also. You had been informed that you should deposit the requisite funds immediately to clear your arrears. You said that the LIC had completed the processing of your loan for Rs.3.8 lakh and you were expected to get it latest by May 15, 1994.

No payment has been received from you, nor have we heard anything further from you.

As you are aware, the construction is in an advanced stage. Non-payment of dues by the members is affecting the progress of the project. It is not possible to wait indefinitely. In

the circumstances, we are regretfully terminating your membership and refunding your deposit with us.

As regards your membership of the National Media Centre, you will avail all the professional facilities planned in the Media Campus, as are available to other members.

Please return the receipt for payment duly signed by you.

Thanking you,

*Yours sincerely,
sd/-
(Upendra Vajpeyi)
General Secretary*

*Mr. Gopal Misra,
B-15, IFS Colony,
Mayur Vihar,
New Delhi -110091*

*Encl. 1. Cheque No.479435 dated 20.5.94 on Bank of India,
Khan Mkt. New Delhi.
2. Receipt.”*

much less, the submission of new application form dated 06.04.2003,
Annexure R-4/2, contents of the same read as under:-

*“THE NATIONAL MEDIA CENTRE COOPERATIVE HOUSE
BUILDING SOCIETY LTD.*

*24, Media Society, Gurgaon 122 002, Haryana (0124-
2353147, 235 2732) mediagaon@satyam.net.in.*

Preliminary information for Application to Membership

Full name (in Block Letters) : GOPAL MISRA

Date of birth/age :07.08.1946

Place of Birth :Lucknow

Father's Name : Late Sri T.N.Misra

Education : Graduation in Pol. Science Hindi & English

Profession/Occupation: Journalist

Association with Media Pioneer, Times of India, Jan Satta,

(details of jobs held in Indian Express, Sunday Mail, Gulf News, Newspapers/Radio/TV) extensively contributed to various Newspapers/Journals/periodicals.

If not a Mediaperson

Please give details of your avocation : N.A.

Present Employment : Media Correspondent, Strawn

Now-India Com.

Publications Now India Com

Permanent address: 35, Media Centre, Gurgaon, Haryana-122002.

Present address : -do-

Telephone office: 26287223 Res:2356746

E.Mail Address :gopalmisra@hotmail.com

Marital status :Married

Name of the spouse : Nishi Misra

Avocation of the spouse : Teacher, Gyan Bharti School,

(with details if working) Saket, New Delhi.

Any other information:

(Please attach additional sheet if necessary)

I am one of the founder member of the NMC Society.

Therefore, my case should be considered on priority basis and with consideration for my role in building up this colony (photo copy attached).

I do not own any house/plot in Haryana:

If I am selected, I understand that I will have to pay for the land, external/internal development and common services. I will fulfill all obligations and financial commitments flowing from the membership of the Society and abide by all the rules, regulations and decisions of the Society.

The information given above is true to the best of my knowledge and belief.

<i>Sd/-</i> <i>Raghavendra Vajpeyi</i> <i>Full Name & Signature</i> <i>of the sponsor</i> <i>(a member of this Society)</i> <i>Dr. RAGHAVENDRA VAJPEYI</i> <i>125, Media Centre,</i> <i>Gurgaon -1220022</i>	<i>Sd/- Gopal Misra</i> <i>(Signature of the applicant)</i> <i>Date: 06.04.2003</i>
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Note: This is not an application form, which will be provided later after preliminary information has been examined.”

The cumulative reading of the aforementioned documents, leads to irresistible conclusion that the facts narrated therein are conceded position on record as there is no rebuttal through replication/rejoinder. The resolution, Annexure P-3 is interesting to read. Against agenda number 3, it was mentioned that Society in the year 2003 for the purpose of 10 additional units thought of inducting new members and though short listed 38 members but final list was reduced to 26 including the persons who had a previous history of defaulters in making payment, in essence, there was three types of categorization:-

- A) the applicants whose papers fully in order;
- B) who were considered eligible but application has some technical defect or who had previous history of defaulter in

making payment;

C) who were sons and sons-in-law.

After the discussion, the Society had decided to place all the categories in one and conducted draw of lots. In draw of lots, 10 persons were selected and name of the person along with other persons was kept in waiting list. The relevant portion of the same reads as under:-

“Based on the draw of lots for the remaining applicants, the following order was approved for the rest of the waiting list. Mr. Arun Vardhan, Mr. Prabir, Bham Bal; Mr. Gopal Misra, Dr. Manmohan Singh, Prof. Jayoti Ghosh; Prof Asis Datta Mr. Chaitaniya Kalbag; Dr. K.L. Gandhi (subject to the earlier qualification); Prof. C.P.Chadha Sekhar, Mr. Vasant Gadse; Mr. Raman Nanda; Mr. Siddarth Pandey; Mr. Rahul Dev; Ms. Sadhna Rout; Mr G.K.chadha; Mr. Ramesh Arora.”

and thereafter, the General Body authorized the Managing Committee to take necessary action for induction of new members. Thus, in my view, the order of the Arbitrator and upheld by the Assistant Registrar that the petitioner at every time remained a member is neither here nor there, for, much less off the record or against the record, for, the receipt of earnest money or submission of new application form has not been adverted to and the petitioner had also an audacity not to disclose the aforementioned fact.

The contents of letter dated 29.09.2003 (Annexure-7) is interesting to read. For the sake of brevity, the same read as under:-

*“THE NATIONAL MEDIA CENTRE COOPERATIVE HOUSE
BUILDING SOCIETY LTD. 24 MEDIA SOCIETY, GURGAON
– 122 002*

*Mr. Gopal Misra,
35, Media Campus,
Gurgaon.*

Dear Mr. Gopal Misra,

Thank you for your letter of September 23, 2003.

*The money to be paid is earnest money towards cost of plot.
Balance money for land cost will be asked for after approval
are obtained.*

*How the Society uses its money is decided by the General
Body of Members.*

*Your payment is overdue if it is not received in 48 hours, the
order of a plot will be withdrawn.*

Thanking you,

Yours sincerely,

*Sd/-
Mahabir Singh,
General Secretary
29 September 2003.”*

The petitioner was given 48 hours to deposit the earnest money but however, concededly, did not deposit the same, therefore, he was not considered for inducting a new member, therefore, had no lien in the Society being a member or founder member.

I need not to delve upon the resolution Annexure P-16 on which serious doubt has been raised by Mr. Ahuja and Mr. Tushar Sharma had been very fair enough to submit that ignoring the aforementioned resolution because the other documents reveal that the petitioner had no foundation or legs to stand own.

There is no dispute to the ratio decidendi culled out in the
aforementioned judgments cited by Mr.Ahuja but the fact remains that
Annexure P-16 which according to the petitioner has been submitted at a
later point of time would pale into insignificance in view of the reasons
given herein above.

For the reasons aforementioned, the impugned order is
perfectly legal and justified which is based upon touchstone of the
reasonability, much less no ground is made out for interference.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 14, 2017

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No